

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

In re Molson Coors Brewing Company Sec. Litig.

Civil Action No. 1:05-294-KAJ

(CONSOLIDATED)

This Document Relates to: ALL ACTIONS

ECF CASE

**MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFFS'
MOTION FOR SUBSTITUTION OF LEAD COUNSEL**

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STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING

This is a motion for substitution of Lead Counsel for the Class brought by the Court-appointed Lead Plaintiffs Metzler Investment GmbH (“Metzler”) and Drywall Acoustic Lathing and Insulation Local 675 Pension Fund (“DALI”) pursuant to the provisions of the Private Securities Litigation Reform Act of 1995 (“PSLRA”). Defendants’ Motion to Dismiss has been fully briefed and is pending before the Court.

SUMMARY OF THE ARGUMENT/STATEMENT OF FACTS

On December 2, 2005, this Court collectively appointed Metzler and DALI as Lead Plaintiffs in this action pursuant to the PSLRA. The Court approved Lead Plaintiffs’ selection of Milberg Weiss Bershad & Schulman, LLP (“Milberg Weiss”) as Lead Counsel.

In light of the recent federal grand jury indictment of Milberg Weiss and two of its former named partners, Lead Plaintiffs conferred on September 8, 2006 and ultimately determined to seek an Order approving the substitution of the law firms of Motley Rice LLC (“Motley Rice”) and Labaton Sucharow & Rudoff LLP (“Labaton Sucharow”) for the Milberg Weiss firm. *See* Declaration of Stuart J. Guber (“Guber Decl.”) at ¶¶ 4-6; *See* Declaration of Christopher J. Keller (“Keller Decl.”) at ¶¶ 4-6. The substitution of Motley Rice and Labaton Sucharow will contribute to Lead Plaintiffs’ ability to prosecute this action with the maximum degree of continuity on behalf of the putative class, aid Lead Plaintiffs in protecting the interests of class members, and help Metzler and DALI fulfill their obligations as Lead Plaintiffs. Lead Plaintiffs also seek the approval of Rigrodsky & Long, P.A. as Liaison Counsel.

ARGUMENT

I. THE LEAD PLAINTIFF HAS THE POWER TO SELECT LEAD COUNSEL SUBJECT TO THE COURT'S APPROVAL

As Lead Plaintiffs, Metzler and DALI have the continuing right to select, subject to court approval, its choice of counsel to represent the class. 15 U.S.C. § 78u-4(a)(3)(B)(v). *See In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 192 (3d Cir. 2005) (“*Cendant II*”) (“The PSLRA is explicit that the power to select counsel resides in the lead plaintiff.”); *In re Cavanaugh*, 306 F.3d 726, 734 (9th Cir. 2002) (“Selecting a lawyer in whom a litigant has confidence is an important client prerogative and we will not lightly infer that Congress meant to take away this prerogative from securities plaintiffs. And, indeed, it did not. While the appointment of counsel is made subject to the approval of the court, the Reform Act clearly leaves the choice of class counsel in the hands of the lead plaintiff.”); *In re Cendant Corp. Sec. Litig.*, 264 F.3d 201, 273 (3d Cir. 2001) (“*Cendant I*”) (“The only powers expressly given to the lead plaintiff . . . are to ‘select and retain’ counsel.”). The Supreme Court has stated that, across all United States jurisdictions, “a client controls the significant decisions concerning [its] representation.” *See Chauffeurs, Teamsters & Helpers Local No. 391 v. Terry*, 494 U.S. 558, 568 (1990).

Lead Plaintiffs Metzler and DALI have selected Motley Rice and Labaton Sucharow to serve as their own counsel, respectively, and as counsel to the Class and, therefore, seek the Court’s approval of Motley Rice and Labaton Sucharow as Co-Lead Counsel pursuant to the PSLRA. The substitution of Motley Rice and Labaton Sucharow as Co-Lead Counsel is appropriate under the PSLRA. *See Cendant II* at 192. Lead Plaintiffs also have selected Rigrodsky & Long, P.A. to serve as Plaintiffs’ Liaison Counsel.

II. MOTLEY RICE AND LABATON SUCHAROW WILL ADEQUATELY PROTECT THE INTERESTS OF THE CLASS

Lead Plaintiffs' decision to substitute Motley Rice and Labaton Sucharow as Co-Lead Counsel in this litigation is reasonable. Motley Rice attorneys have substantial experience in the prosecution of shareholder and securities class actions. *See* Gerber Decl., Ex. A.¹ The firm's Securities and Consumer Fraud practice group has 13 attorneys, a forensic accountant, and utilizes additional resources from the firm.² The Motley Rice attorneys devoted to the securities fraud practice have substantial experience litigating PSLRA securities fraud class actions.³ A list of cases in which these Motley Rice attorneys managed or played major roles while their former firms acted as lead or co-lead counsel is set forth in Exhibit A to the Guber Decl. Some of Motley Rice's experience litigating other types of complex class litigation is also set forth in Exhibit A to the Guber Decl.

Labaton Sucharow is one of the country's premier national law firms that represent individual and institutional investors in class action, complex securities, and corporate governance litigation. The firm has been a champion of investor rights for over 40 years and has been recognized for its reputation for excellence by the courts. Labaton Sucharow has had a leading role in numerous important actions on behalf of defrauded investors. In

¹ Rigrodsky & Long, P.A. attorneys also have substantial experience in litigating shareholder and securities litigation. *See* Guber Decl. Ex. B.

² The firm has over 65 attorneys in five offices, with a support staff of approximately 350 employees.

³ This experience includes *In re Providian Fin. Corp. Sec. Litig.*, Master File No. C-01-3952-CRB (N.D. Cal.). Commenting on Motley Rice securities fraud attorneys' efforts at their prior firm, United States District Judge Charles R. Breyer told Messrs. Evangelista and Guber, "I actually did want to tell you that I thought you did an excellent job. . . . And if other cases come along the pike, I would be delighted to consider you again." Nov. 12, 2004, Hearing Tr. at 13 (relevant portions are attached at Exhibit C to the Guber Decl.).

particular, Labaton Sucharow served as lead counsel for the Connecticut Retirement Plans and Trust Funds in the *Waste Management* securities litigation which resulted in a settlement of \$457 million in cash, one of the largest common-fund securities class action settlements achieved at the time. *See* Keller Decl. Ex. A; *see also In re Waste Mgmt., Inc. Sec. Litig.*, 128 F. Supp. 2d 401, 432 (S.D. Tex. 2000) (stating that Labaton Sucharow “ha[s] been shown to be knowledgeable about and experienced in federal securities fraud class actions”).

Based on their attorneys’ extensive experience prosecuting securities fraud class action litigation and other complex class litigation, Motley Rice and Labaton Sucharow are well-qualified to serve as Co-Lead Counsel in this matter and will adequately protect the interests of class members.

CONCLUSION

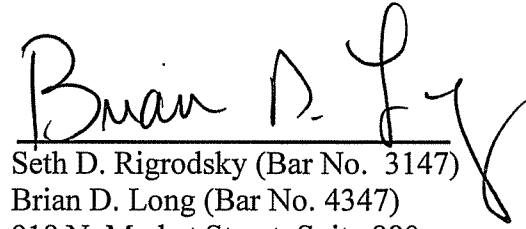
For the foregoing reasons, Lead Plaintiffs Metzler and DALI respectfully request that this Court grant Lead Plaintiffs’ motion and issue an Order approving the substitution of Motley Rice and Labaton Sucharow as Co-Lead Counsel for the firm of Milberg Weiss pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v) and approve Rigrodksy & Long, P.A. as Plaintiffs’ Liaison Counsel.

Dated: October 25, 2006

Respectfully submitted,

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